

REMARKS

This is responsive to the office action dated September 29, 2004 in the above-identified application. The Examiner rejects all the pending claims, except claims 3 and 20, as being obvious over combinations of Anglin (US Patent No. 6,026,414), Garvey et al (US Patent No. 5,774,667) and Beeler, Jr. (US Patent No. 5,974,563) under 35USC §103(a). The Examiner's holding that claims 3 and 20 have allowable subject matter is noted with appreciation.

First of all, Applicants believe that a brief explanation of the present invention will be helpful in understanding the patentably distinguishing features of the present invention over the cited prior art. The present invention discloses a novel technique in a data backup service provided by a service provider (such as an ISP) that also provides data communications services, which often saves, without a request from the subscribers for such a saving operation, some of the data communicated between the subscribers and the service provider, or between the subscribers and remote destinations through the service provider. As taught by the present invention, when the service provider receives from a subscriber a request for backing up a specific data increment identified by an identifier, the service provider first checks itself to determine if it has a copy of at least a portion of the identified data increment (as such a portion may have been saved in previous non-backup data communications sessions) or can be regenerated or replicated by the service provider (as some of the data may be originated by the service provider in previous communications sessions). If it can be found, the identified data increment is backed up using the copy or regenerated or replicated portion from the service provider, and if it cannot be found, the service provider may either "sniff" (monitor) and copy the requested data increment (or a portion thereof) for the backup operation (as defined in amended independent claims 1, 12 and 15), or may back up the requested data increment by downloading it from the subscriber. Thus, the present invention takes advantage

of the fact that the requested data increment or a portion thereof may have been saved at the service provider during previous non-backup data communication sessions.

Newly added claims 21-36 have expressly defined the present invention as explained above. In particular, independent claims 21 and 29 have recited the distinguishing feature that the service provider system saves, without a request from subscriber servers, at least some of data communicated between the subscriber servers and the service provider system. Applicants respectfully submit that this distinguishing feature cannot be found in any of the cited patents, as explained in detail below.

In particular, Anglin (US Patent No. 6,026,414) discloses a system for backing up a requested file from a file server. More specifically, a client (read as “subscriber”) first checks and determines whether the desired file (read as “data” or “data increment”) is available in the shared name space maintained by the file server, and if yes, the client sends a request to a proxy client. On behalf of the client, the proxy client contacts the file server to back up the requested file in the backup server. However, no teaching or implication can be found in Anglin that the backup server or the file server (combined to read as “service provider system”) saves files without a request from clients. In fact, the backup server saves files only upon request from the clients, while the file server apparently only maintains the shared name space among clients and does not physically stores the files. Moreover, neither Garvey et al (US Patent No. 5,774,667) nor Beeler, Jr. (US Patent No. 5,974,563) supplies the missing teaching. Therefore, Applicants believe that independent claims 21 and 29 are patentable over the cited references and their combinations.

At least for the same reasons, their dependent claims 22-28 and 30-36 are also patentable since each of them includes all the limitations in either of them. In particular, dependent claims 27 and 31 define a feature that the service provider system monitors and copies data having specified properties for backing up operation, which is not disclosed in any of the cited references and is

admitted by the Examiner to be allowable subject matter. Dependent claims 28 and 33 further defines a distinguishing feature that the service provider system is an ISP system. None of the cited references teaches that an ISP also provides a backup service upon request from the client. Dependent Claims 26 and 35 further define a distinguishing feature that the requested data increment is one that was transmitted in a previous communications session without a request for backup from the subscriber. None of the cited reference teaches that the subscriber requests to back up a data increment that was previously transmitted without a request for backup. The patentability of these dependent claims is thus further strengthened by these distinguishing features.

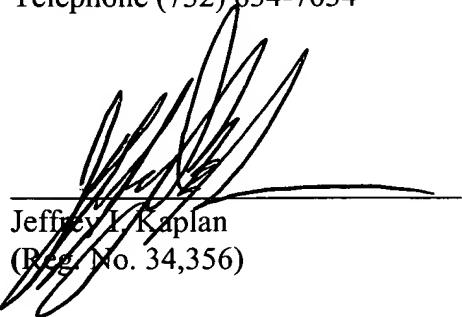
Moreover, Applicants have amended independent claims 1, 12 and 15 to more properly define the present invention and to include the distinguishing features in claim 3, which the Examiner agrees has allowable subject matter. Thus, amended independent claims 1, 12 and 15, as well their dependent claims 2-6, 12-14 and 16-19, are believed patentable. Moreover, similar to dependent claims 26 and 35, dependent claim 3 defines the distinguishing feature that the requested data increment is one that was transmitted in a previous communications session without a request for backup from the subscriber, which strengthens the patentability of claim 3. In addition, dependent claims 2-4, 13-14, 16 and 19-20 are amended to more precisely define the present invention and to perfect the claim language, and such amendments are believed to have overcome the objections and rejections by the Examiner because of the deficiencies in claim language.

Applicants respectfully submit that the claims are now in good condition for allowance, and thus respectfully request reconsideration and allowance in view of the above remarks and amendments. The Examiner is authorized to deduct additional fees believed due from our Deposit Account No. 11-0223.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail, in a postage prepaid envelope, addressed to Mail Stop Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on October 28, 2004.

Signed Ute H. Wojtkowski Print Name Ute H. Wojtkowski